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Regional Airline Association

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DEPT. OF TRANSPORTATION
DOCKET SECTION

98 OCT 26 AM 10:06 October 21, 1998

FAA-98-4458-3

U.S. Department of Transportation Dockets
Docket No. FAA-1998-4458; FAA Notice 98-13
400 Seventh St., SW., Rm. Plaza 401
Washington, DC 20590

**SUBJECT: Prohibition of the Transportation of Chemical Oxygen Generator Devices -
Proposed Rule**

Dear sir/madam;

The Regional Airline Association (RAA) submits the following response to the subject proposed rule on behalf of its membership (attachment A). RAA encouraged its members to submit comments directly to the docket. RAA comments should be considered as supplemental to any comments individually submitted to the docket by RAA members.

RAA requests that the proposed rule be withdrawn.

Rules pertaining to the shipment of hazardous materials properly belong in the Hazardous Material Regulations (HMR) that are administered by the DOT Research and Special Projects Administration (RSPA). Part 91/121/135 amendments should be restricted only to rules changes pertaining to the operation of aircraft by the air carriers and general aviation. The FAA openly admit that adoption of the proposed rule would overlap with RSPA's final and proposed hazardous materials regulations. Presidential Executive Order 12866 directs the agencies to "avoid regulations that are duplicative with other regulations of other Federal Agencies". The air carriers clearly don't need two regulations that say the same thing nor do they need duplicative regulations simply because two agencies can't successfully communicate with each other.

The only requirement not covered by the RSPA regulations is a prohibition of shipping newly manufactured chemical oxygen generator canisters that have not yet been charged with oxygen. Such canisters pose absolutely no safety risk if shipped. The FAA maintains that the sole objective of the prohibiting the shipment of empty containers is to "reduce the risk of human error". While there are certainly numerous regulations that respond to inadvertent actions of personnel, the proposed rule also prohibits the intentional act of shipping of perfectly safe containers. The basis for such rationale must be that the FAA assumes that airline personnel cannot be properly trained to recognize a safe canister from an unsafe canister and therefore prohibits both actions. RAA does not accept this premise and considers that the more appropriate response is a regulation that specifically requires training of airline personnel involved with the shipment of oxygen generator canisters when the air carriers' fleet contains such canisters.

Another shortcoming with the proposed rule is that the wording is confusing as to what precautions an operator would take to ensure that their own employees or their passengers do not ship or carry such devices aboard their airplanes, either inadvertently or intentional. How do you show compliance with the proposed words "acts in any manner that would result in the carriage of.. "? Such language is more commonly used in a criminal code than an airline operating rule. The airline operating rules exist so that the operators establish safe practices and operate in a safe manner. The intent of operating rules is not to determine degree of guilt. Since the language covers the actions of both the airline employees and their passengers, what actions would be a sufficient response? Would posting of notices satisfy the actions of its passengers? How much training would be required of its own employees? Clearly it will be extremely difficult for an airline to demonstrate compliance with a rule that seeks to prohibit both the inadvertent and intentional acts of its employees and its passengers.

RAA therefore requests that the proposed rule be withdrawn and that the FAA coordinate with the DOT/RSPA in ensuring that Dangerous Goods rules are adequate to address safety concerns associated with the shipment of oxygen generators. RAA would also be supportive of a new operating rule that specifically identifies training for airline personnel involved with the shipment of oxygen generator canisters when the air carriers' fleet contains such canisters.

Your consideration of the comments and requests of RAA and its members, is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "David Lotterer", written in a cursive style.

David Lotterer
Vice President - Technical Services

Attachment

ATTACHMENT A

Company	City, State
Aeromar	Mexico City, DF
Air Midwest	Wichita, KS
AirNet Systems	Columbus, OH
Air Nova	Enfield, Nova Scotia, Canada
Air Ontario	London, Ontario,
Air Serv	Redlands, CA
Air Wisconsin	Appleton, Wis
Airship Resources	Arlington, VA
Allegheny	Middletown, PA
AMR Eagle	Dallas, TX
Aspen Mountain Air	Grand Prairie, TX
Atlantic Coast Airlines	Dulles, VA
Atlantic Southeast	Atlanta, GA
Austin Express	Austin, TX
Big Sky Airlines	Billings, MT
Business Air	Bennington, VT
Business Express	Dover, NH
Cape Air	Hyannis, MA
CCAIR	Charlotte, NC
Champlain Air	Plattsburgh, NY
Chautauqua Airlines	Indianapolis, IN
Colgan Air	Manassas, VA
Comair	Cincinnati, OH
CommutAir	Plattsburgh, NY
Community Air	Ukiah, CA
Continental Express	Houston, TX
Corporate Air	Billings, Montana
Corporate Express	Nashville, TN
Eagle Aviation	Las Vegas, NV
Empire Airlines	Coeur d'Alene, ID
ERA Aviation	Anchorage, AS
Executive Airlines Inc.	San Juan, P.R.
Executive Airlines	Farmingdale, NY
Express Airlines I	Memphis, TN
Falcon Express	Tulsa, OK
Cargo Airline	
Federal Express	Memphis, TN
First Air	Dallas, TX
Grand Canyon Airlines	Grand Canyon, AZ
Great Lakes Aviation	Bloomington., MN

Company	City, State
Gulfstream Int'l	Miami Springs, FL
Horizon Air	Seattle, WA
Island Air	Honolulu, HI
Kitty Hawk Air Cargo	DFW Airport, TX
Mesa Airlines	Farmington, NM
Mesaba	Minneapolis, MN
Midway Airlines	RDU Int'l Airport, NC
Paradise Island	Ft. Lauderdale, FL
Piedmont Airlines	Salisbury, MD
PSA Airlines	Vandalia, OH 45377
Scenic Airlines	N. Las Vegas, NV
Seaborne Aviation	Christiansted, USVI
Servicios Aereos Litoral	San Antonio, TX
Shuttle America	Windsor Locks, CT
Skyway Airlines	Oak Creek WI
Skywest	St. George, UT
Specialized Transport Int'l	Melbourne, FL
Sunshine	Northridge, CA
Sunworld Int'l Airlines	Ft. Mitchell, KY
Tie Aviation	Jamaica, NY
Trans States Airlines	St. Louis, MO
Twin Otter Int'l	North Las Vegas, NV
Universal Airways	Houston, TX
Walker's Int'l	Ft. Lauderdale, FL
Wiggins Airways	Norwood, MA
Wings Airways	Blue Bell, PA